Supreme Court, U.S.
FILED
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MICHAEL RODAK, JR., CLERK

80-460

CASE NO. _____

IN THE

Supreme Court of the United States

October Term, 1980

JOSEPH FRANCIS MERLO,
RAYMOND PARKS,
HARRY BLACKFORD,

Petitioners,

—v—

STATE OF OHIO,

Respondent.

APPENDIX TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT FOR THE STATE OF OHIO

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STATE OF OHIO)		IN THE COURT OF APPEALS
) SS:		NINTH JUDICIAL DISTRICT
SUMMIT COUNTY)		
STATE OF OHIO	)	C.A. NO. 9244
	)	
Plaintiff-Appellee	)	APPEAL FROM JUDGMENT
	)	ENTERED IN THE
v.	)	COMMON PLEAS COURT
	)	SUMMIT COUNTY, OHIO
RAYMOND J. PARKS	)	CASE NO. 78 6 0663(E)
	)	
Defendant-Appellant	)	
STATE OF OHIO	)	C.A. NO. 9245
	)	
Plaintiff-Appellee	)	APPEAL FROM JUDGMENT
	)	ENTERED IN THE
v.	)	COMMON PLEAS COURT
	)	SUMMIT COUNTY, OHIO
CECILIA B. PARKS	)	CASE NO. 78 6 0663(F)
	)	
Defendant-Appellant	)	
STATE OF OHIO	)	C.A. NO. 9250
	)	
Plaintiff-Appellee	)	APPEAL FROM JUDGMENT
	)	ENTERED IN THE
v.	)	COMMON PLEAS COURT
	)	SUMMIT COUNTY, OHIO
HARRY S. BLACKFORD, aka HARRY WILSON	)	CASE NO. 78 6 0663(G)
	)	
Defendant-Appellant	)	

STATE OF OHIO	)	C.A. NO. 9251
	)	
Plaintiff-Appellee	)	APPEAL FROM JUDGMENT
	)	ENTERED IN THE
v.	)	COMMON PLEAS COURT
	)	SUMMIT COUNTY, OHIO
SANDRA MERLO BRUNTON	)	CASE NO. 78 6 0663(D)
	)	
Defendant-Appellant	)	

STATE OF OHIO	)	C.A. NO. 9252
	)	
Plaintiff-Appellee	)	APPEAL FROM JUDGMENT
	)	ENTERED IN THE
v.	)	COMMON PLEAS COURT
	)	SUMMIT COUNTY, OHIO
NANCY KUNGLE MERLO	)	CASE NO. 78 6 0663(B)
	)	
Defendant-Appellant	)	

STATE OF OHIO	)	C.A. NO. 9253
	)	
Plaintiff-Appellee	)	APPEAL FROM JUDGMENT
	)	ENTERED IN THE
v.	)	COMMON PLEAS COURT
	)	SUMMIT COUNTY, OHIO
JOSEPH FRANCIS MERLO	)	CASE NO. 78 6 0663(A)
	)	
Defendant-Appellant	)	

DECISION AND JOURNAL ENTRY

Dated: December 19, 1979

These causes were heard October 30, 1979, upon the record in the trial court, including the transcript of proceedings, and the briefs. They were argued by counsel for the parties

and submitted to the court. We have reviewed each assignment of error and make the following disposition:

MAHONEY, J.

FACTS

Raymond Parks, Cecilia Parks, Harry Blackford, Sandra Brunton, Nancy Merlo, Joseph Francis Merlo, Gerald L. Hall, Bruce Miller, three business proprietors, and three alleged corporations were jointly indicted on four counts.

The first count was engaging in organized crime in violation of R.C. 2923.04(A)(5). The second count was illegally conducting a bingo game in violation of R.C. 2915.09(A)(2). The third count was grand theft in violation of R.C. 2913.02(A)(2) and (A)(3). The fourth count was gambling in facilitating a game of chance conducted for profit in violation of R.C. 2915.02(A)(2).

Gerald L. Hall and Bruce Miller were granted severance of their trials and elected

to be tried by the court. Hall was acquitted. Miller was acquitted of Count II, but was found guilty of counts one, three and four.

Defendants, Ray and Cecilia Parks, Harry Blackford, Sandra Brunton, Joseph Francis and Nancy Merlo, plea bargained with the state. The bargains set forth in the transcript of proceedings, indicate Joseph F. Merlo pled no contest to all four counts: Sandra Brunton, Cecilia Parks and Nancy Merlo pled no contest to count four, the misdemeanor gambling. Ray Parks and Harry Blackford entered pleas of no contest to counts two, three and four. Nolle prosequi motions by the state were granted on all the remaining counts. The trial court entered findings of guilty and sentenced all six defendants.

All six defendants filed a joint appeal with a consolidated brief, containing 37 individual assignments of error which we combine and address under the six arguments set forth in the consolidated brief.

ARGUMENT I

"The trial court erred in denying appellant Joseph Merlo's motion for judgment of acquittal on all counts in the indictment."

On Monday, March 12, 1979, before impaneling the jury, the prosecutor advised the court that the state and the defendants had been negotiating a plea bargain but lacked agreement.

"***upon the underlying factual basis for the no contest pleas, allow all Counsel and the State to feel that the appeal rights have been adequately preserved in that entire matter.***."

The trial was continued until Wednesday, March 14. At which time, the prosecutor advised the court a plea bargain had been reached under Crim. R. 11(F). Essentially, the pleas and nolles were as set forth above with certain recommended sentences by the prosecutor and a promise that no further indictments would be sought.

Then the prosecutor said:

"***.

"And Defendants--I would state to the Court--do intend to have--indicated the desire that they do intend to perfect their appeals after the findings--if and when the Court makes findings of guilty and sentences with regards to these no contest pleas. And other matters, I believe, are best left for after the statements, in fact, and if the Court inquiries of the Defendants as to their rights in connection with the plea."

"***."

The trial judge then addressed each defendant personally. With deliberate, exacting care, he made inquiries concerning all matters set forth in Crim. R. 11(C) and received appropriate responses.

During the Crim. R. 11(C) inquiry of Joseph Merlo, the trial judge asked if Merlo understood that:

"***if you enter a plea of no contest, as indicated that you anticipate doing in this Court, then you are not admitting the charges, but you are consenting to this Court making a finding from the Indictment and from the stipulation of facts which will be made to this Court?"

"***."

Merlo answered that he understood.

The trial judge also asked Merlo:

> "***do you understand that when you enter such a plea you then consent to the Court making a finding and proceeding to sentence, if the Court finds you guilty of those counts?"
>
> "***."

Again, Merlo answered that he understood.

The trial judge also inquired of Merlo:

> "***.
>
> "And do you understand the State is required to prove each and every one of these counts and each and every element thereof beyond a reasonable doubt when you enter a plea of no contest or guilty--or no contest--or no contest, as in this case, you relieve them of that burden, you understand that?"
>
> "***."

Again, Merlo responded that he understood.

Additionally, the court asked if Merlo understood the consequences of the no contest plea and he responded affirmatively.

Defense counsel then moved and renewed motions for dismissal of all counts for various reasons. The prosecutor then said:

"***.

"The State's case with regards to all six Defendants, if we went to trial, would consist of the following items:"

"***."

The prosecutor then stated the evidence would be all of the testimony in the trial of Bruce Miller and Gary Hall. A transcript of proceedings was produced for the court's use. However, the trial judge who was the same judge who had previously heard the Miller and Hall case as the trier of fact, asked if counsel all agreed that he could use his recollection rather than read the transcript. All agreed.

The prosecutor then continued by saying he would have produced several more witnesses. He proceeded to briefly recite the proposed testimony of each, including various searches, surveillances and various exhibits. The only exception to the Miller-Hall transcript of proceedings would be to exclude the testimony of a telephone conversation between state's

witness Attorney Bernard Roetzel and the defendant, Attorney Bruce Miller, on pages 158 and 159 which referred to Joseph E. Merlo's participation in the bingo operation.

Merlo's attorney then requested that, prior to entering a finding, the court enter a judgment of acquittal since none of the charges had been proven by the prosecutor's recital of facts. The court then overruled the motion as to all defendants. He called the defendant, Joseph F. Merlo, forward and said:

> "***.
>
> "Mr. Merlo, you have entered a plea of no contest to all counts of this Indictment. First of all, engaging in organized crime, conducting an illegal bingo game and grand theft and gambling. The Court has heard the stipulation of facts, recitation of facts, and which includes the proceedings that were held in the Bruce Miller trial which this Court presided over. Based upon those things, this Court makes a finding of guilty as to each and every one of the counts which you entered a plea of no contest."
>
> "***."

The Court thereupon imposed the recommended sentence. Crim. R. 11(B)(2) and (3) provides:

> "(B) Effect of guilty or no contest pleas. With reference to the offense or offenses to which the plea is entered:
>
> "(2) The plea of no contest is not an admission of defendant's guilt, but is an admission of the truth of the facts alleged in the indictment, information, or complaint and such plea or admission shall not be used against the defendant in any subsequent civil or criminal proceeding.
>
> "(3) When a plea of guilty or no contest is accepted pursuant to this rule, the court shall, except as provided in subsections (C)(3) and (4), proceed with sentencing under Rule 32."

Crim. R. 11(C)(2)(b) says:

> "(C) Pleas of guilty and no contest in felony cases.
>
> "(2) In felony cases the court may refuse to accept a plea of guilty or a plea of no contest, and shall not accept such plea without first addressing the defendant personally and:
>
> "(b) Informing him of and determining that he understands the effect of his plea of guilty or no contest, and that the court upon acceptance of

the plea may proceed with judgment and sentence."

Crim. R. 11(C)(4) states:

"(4) With respect to all other cases the court need not take testimony upon a plea of guilty or no contest."

Crim. R. 12(H) provides:

"(H) Effect of plea of no contest. The plea of no contest does not preclude a defendant from asserting upon appeal that the trial court prejudicially erred in ruling on a pretrial motion, including a pretrial motion to suppress evidence."

Merlo argues that the state fails in its burden of proving each and every element of the offense and that this reviewing court should apply the standards of Jackson v. Virginia, ___U.S.___, 99 S.Ct. 2781 (1979); In re Winship, 397 U.S. 358 (1970), and State v. Nutter, 22 Ohio St. 2d 116 (1970) and find the evidence insufficient for conviction. Merlo further argues that the little evidence against him is all circumstantial and readily reconcilable with his theory of innocent behavior. State v. Sorgee, 54 Ohio St. 2d 464 (1978) and State v. Kulig, 37 Ohio St. 2d 157

(1974). Thus, Merlo asks us to weigh the evidence against him on his no contest plea. We cannot, for that is not the function of a no contest plea.

A plea of no contest, accepted by the court, is an admission of the truth of the facts alleged in the indictment (Crim. R. 11 (B)(2)). Defendant cannot then ask the court to weigh the evidence against him and determine his guilt. The court can only weigh evidence as to its sufficiency after a plea of not guilty and the evidence on either side is closed. To do so would be to say the defendant disputes the truth of his own admission. The motion for a judgment of acquittal is not a pre-trial motion. Therefore, it cannot be appealed under Crim. R. 12(H).

The no contest plea is not intended to precede a mini-trial or some sort of contrived summary proceeding to pass questions of law or facts on to the courts of appeals. That can only be done by stipulated facts after a plea of not guilty and a finding of guilty by the trial judge.

The no contest plea under Crim. R. 11 does not contemplate or require any further finding by the trial court, not even a ritualistic finding of guilty. The court is empowered to proceed promptly to sentencing (Crim. R. 11(B)(3)). The court is not required to take any testimony. Any testimony that is received or any statements made can only have a bearing on the question of sentencing.

If, by chance, the trial court accepts testimony or statements and determines that the underlying factual basis may not be sufficient to establish one of the essential elements of the charge, then the court must refuse to accept the plea of no contest and enter a plea of not guilty and put the state to its burden of proof. The trial judge has no authority under a no contest plea to reduce or change the charge to a lesser included offense or to one of a lesser degree. He likewise has no authority to enter findings

of not guilty.[1]

Merlo was properly examined under Crim. R. 11 by the trial court and indicated he knew the consequences of a no contest plea and understood he was relinquishing his rights, particularly the right to require the state to prove his guilt beyond a reasonable doubt. (TOP V p. 40).

ARGUMENT II (all defendants)

"The trial court erred in overruling appellants' motions to suppress evidence seized in violation of the Courth and Fourteenth Amendments of the United States Constitution and Article I, §14 of the Ohio Constitution."

"(A) Suppression was required because the warrants were issued without probable cause.

"(B) Suppression was required because the warrants were overbroad and vague.

---

[1] R.C. 2937.07 which authorized findings of guilty or not guilty after an explanation of circumstances following a no contest plea in misdemeanor cases, has been impliedly superceded by Crim. R. 11.

"(C) Suppression was required because the seizures were general and exploratory, beyond the scope of the warrant."

Defendants attack the search warrant on the broad grounds that it recites a great deal of innocent behavior and draws conclusions predicated on opinions and estimates of the deputy sheriffs. They further argue that there was no basis for an independent magistrate to reach a decision. We disagree.

The purpose of an affidavit and supporting testimony is to show that probable cause exists to believe that a particular crime has been or is being committed and that evidence of the crime can be found at specifically designated locations.

The law enforcement officer, like any professional, hones his skills by expertise and practice. As those skills develop, a law enforcement officer can become an expert in his particular field of enforcement. He cannot go to a formal school to become knowledgeable, and achieve expertise in drug abuse, burglary,

auto theft, missing persons, gambling, and extortion, etc. When he becomes knowledgeable and achieves that expertise, his opinions concerning same should be considered in affidavits for search warrants. The issuing magistrate must distinguish between pure conclusory statements and opinions based upon an expert's knowledge and expertise. In this case, Detective Maurer's experience and expertise are set forth under paragraph one of the factual portion of the affidavit. The opinions he expresses are based upon personal observation and the reports of other officers. He examined the formal required reports filed with the Attorney General's office. Surveillance was maintained on each of the defendants and their automobiles. From these observations, the inference is apparent that there was probable cause to believe that defendants were all involved in the continuing operation of the bingo games.

The observation of the reports and investigations of the Attorney General's office reveal that the bingo laws were being violated because the charities were not receiving the gross receipts after the allowable statutory expenses.

We, therefore, conclude that there was a factual basis upon which the issuing magistrate could find the necessary probable cause.

The warrants here read:

"***.

"Supplies, books and records and proceeds of illegal games and gambling paraphernalia,

"which is evidence of the commission of a criminal offense, or fruits of that crime, to-wit: Engaging in Organized Crime and Conducting an Illegal Bingo Game."

"***."

We further hold that the warrants were not overbroad and vague and meets the tests of Resen v. Maryland, 427 U.S. 463 (1976); Marron v. United States, 275 U.S. 192 (1927); Spinelli v. United States, 382 F. 2d 871 (8th

1967); and Nuckols v. United States, 99 F. 2d 353 (D.C. Cir. 1938).

We further find that the seizures were not general and exploratory beyond the scope of the warrants. There were some personal items seized and returned. Nothing beyond the scope of the warrant was used in evidence. We hold that the seizure of some personal items does not invalidate the seizure of the other items. No evidence was taken on the motion to suppress evidence as to what was seized, where it was seized, and if it had some evidentiary value. The burden in attacking the warrants is upon the defendant-appellants. Maryland Penitentiary v. Hayden, 387 U.S. 294, 307 (1967).

ARGUMENT III (all defendants)

"The trial court erred by refusing to grant appellants an evidentiary hearing on the issue of material misrepresentations in the search warrant affidavit in violation of appellants' fourth and fourteenth amendment rights."

Defendants rely on Franks v. Delaware, 438 U.S. 154 (1978). They support their claim by two affidavits of George W. Palda, counsel of record. These affidavits are not based upon any facts within the personal knowledge of the affiant. The averments are merely hearsay statements of matters the affiant says he learned from the defendants and a review of the testimony in State v. Miller, Summit No. 9201 (9th Dist. Ct. App., December 5, 1979). Based upon these, Palda concludes that certain statements in the affidavit for the search warrant are false. Palda's affidavit volunteers his conclusion that there is no inconsistency shown in the attendance figures.

We hold these affidavits were procedurally insufficient to require an evidentiary hearing. They are void of any offer of proof of deliberate falsehood or of reckless disregard for the truth. Taken in their best light, they show some inconsistencies in the surveillance teams testimony concerning the containers in which the money was allegedly transported.

We draw different conclusions than Mr. Palda from the attendance figures and gross receipts set forth in Detective Maurer's affidavit for the search warrants. There is no proof that the inconsistencies in testimony were deliberate or made in reckless disregard for the truth.

ARGUMENT IV (J. F. Merlo)

"The trial court erred in overruling appellant Joseph Merlo's motion to dismiss Count I of the indictment, engaging in organized crime, because the statute is unconstitutional under the United States and Ohio Constitutions.

"(A) R.C. 2923.04 is unconstitutionally vague and overbroad.

"(B) R.C. 2923.04 violates due process because it fails to require proof of guilty knowledge.

"(C) R.C. 2923.04 violates the prohibitions of the United States Constitution and Ohio Constitution against cruel and unusual punishment."

We have previously held R.C. 2923.04 (engaging in organized crime) is unconstitutional. See, State v. Powell, Summit No. 8878 (9th Dist. Ct. App., November 28, 1979) and

State v. Miller, supra. Those opinions address all of the attacks raised by the defendants, except that R.C. 2923.04 imposes cruel and unusual punishment. We find such an argument is without merit.

ARGUMENT V
(J. F. Merlo, Ray Parks, Harry Blackford)

"The trial court erred by overruling appellants' motions to dismiss count II of the indictment because the underlying statute, R.C. 2915.09 (A)(2) is unconstitutionally vague."

The defendants assert that the phrase "providing that the amount of the receipts so spent is not more than is customary and reasonable for a similar purchase, lease, etc.***" is vague. They argue that the "customary and reasonable" and "similar purchases" are not defined in the statute. Thus, they say they are without any guidelines as to what conduct is proscribed.

The phrases in question are words of common usage with generally accepted common meanings easily ascertainable by reference to a standard dictionary. The phrases put the

burden on the state to show what were customary and reasonable expenditures and that they were exceeded. The trier of fact can readily make such a determination by applying the ordinary accepted meaning of the words.

It is ludicrous to argue vagueness concerning the reasonableness of expenditures when the very transcript of proceedings in the State v. Miller trial which these defendants had asked the trial court to review shows that they violated several other provisions of the statute, i.e. They (1) did not give the charities the net receipts in excess of expenses, (2) charged on rentals of equipment, cards and prizes to make a profit for themselves for running the game, (3) paid persons to work as bingo game operators, checkers, etc., (4) paid their attorney out of the proceeds, and (5) did not lease the equipment from a licensed charitable organization.

Thus, even if we severed the phrases complained of, the statute would still be viable and the defendants in violation thereof.

ARGUMENT VI
(J. F. Merlo, Ray Parks,
Harry Blackford)

"The trial court erred by failing to dismiss counts II and III of the indictment in violation of appellants' constitutional rights to adequate notice of the crimes charged."

Defendants' brief clearly sets forth the applicable case law. However, we fail to see where the language of the indictment does not set forth all of the essential elements of each crime charged with clarity. The defendants fail to point out the missing elements or lack of clarity.

The alleged vagueness of the dates, i.e. (September 1977 to June 9, 1978) emphasizes that we are dealing with continuous on-going objectives of a criminal enterprise. That limits the number of convictions possible to only one under each statute even though there were various amounts withheld wrongfully each night the illegal gambling game was operated.

Crim. R. 7 permits the alternative indictment in counts II and III. No constitutional

impediment exists when counts are drawn in the alternative and a bill of particulars is furnished. State v. Fowler, 174 Ohio St. 362 (1963).

The last objection as to the failure of other indictments to specify the name of the owner of the money included in the theft was clarified by the bill of particulars which designated the various charities as the owners.

PLAIN ERROR - RAISED SUA SPONTE

We held R.C. 2923.04 to be constitutional and to be a conspiracy type statute in State v. Powell, supra, and State v. Miller, supra. Both cases were decided after the court accepted the pleas in this case. Both of those cases applied the provisions of R.C. 2923.01(F), (G) and (K) to R.C. 2903.04. This means that we must find it was plain error for the trial court to accept Joseph Merlo's no contest plea to R.C. 2923.04 at the same time he was accepting the no contest pleas to two of the specific crimes involved with the

overall conspiratorial required under the organized crime statute.

SUMMARY

Accordingly, we dismiss count I of the indictment as to Joseph Francis Merlo, but we affirm his convictions and sentence as to counts II, III and IV.

We affirm the convictions of Nancy Merlo, Cecilia Parks and Sandra Brunton as to Count IV of the indictment. We affirm the conviction of Ray Parks and Harry Blackford as to count II, III and IV.

The court finds that there were reasonable grounds for this appeal.

We order that a special mandate, directing the Summit County Common Pleas Court to carry this judgment into execution, shall issue out of this court. A certified copy of this journal entry shall constitute the mandate, pursuant to App. R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of

judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App. R. 22(E).

Costs taxed to appellants.

Exceptions.

/S/_____
Presiding Judge
- for the Court -

BELL. P. J.
CONCUR

VICTOR, J.
CONCURS IN JUDGMENT ONLY

APPEARANCES:

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IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO

STATE OF OHIO	)	CASE NO. 78-6-0663-A thru N
PLAINTIFF	)	
--v--	)	O R D E R
JOSEPH FRANCIS MERLO, ET AL	)	
DEFENDANTS	)	

This matter came on for hearing on the 21st day of November, 1978, upon Motions filed by the Defendants.

The Court finds that Judge William Baird had considered and ruled on a number of motions filed by the Defendants prior to his disqualification from this case. All such Motions are considered refiled for determination by the Court without the necessity of counsel formally refiling such motions.

This Court thereupon heard arguments of counsel on the Motion to Dismiss filed by the defendants, arguments upon the Motion to Sever, and the Motion to Suppress statements filed by the Defendant, Bruce W. Miller.

All motions requiring Evidentiary Hearing are continued to a later date.

As to the Motions to Dismiss the Indictment, the Court hereby overrules such motions.

As to the Motion of the Defendant, Bruce W. Miller, to suppress certain statements made by him to or in the presence of Attorney Roetzel, the Court hereby overruled such motion.

As to the Motion to Sever filed by Defendant, Bruce W. Miller, the Court finds such Defendant has waived Jury Trial and will, therefore, rule upon such motion pending determination of Waiver of Jury by other defendants prior to the commencement of the trial of the Defendant Miller on December 4, 1978.

Dated at Ravenna, Ohio, this 30th day of November, 1978.

/S/_____
COMMON PLEAS JUDGE

IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO

STATE OF OHIO	)	CASE NO. 78-06-0663
	)	
PLAINTIFF	)	
	)	
--vs--	)	RULING ON DEFENDANTS' MOTIONS
	)	
JOSEPH FRANCIS MERLO, ET AL	)	
	)	
DEFENDANTS	)	

These matters came before the Court upon the various motions which have been made by the various Defendants in this action. Since various Defendants have joined in each others' motions, the Court will rule on all motions as to all Defendants as if all Defendants have joined in all motions.

Defendants' motion for a stay of proceedings pending appellate determination of State vs. Carnine, is "overruled" and the Court reaffirms its prior ruling that Ohio Revised Code Section 2923.04 (Organized Crime) is constitutional as applied in this case.

Defendants' motion to dismiss Count No. 4 of the Indictment (First Degree Misdemeanor) as not having been timely filed is "overruled"

on the grounds that Count No. 4 is part of a common indictment encompassing felonies arising out of the same alleged conduct and that said felonies control the time limitations regarding the prosecution of all four counts in the Indictment.

Defendants' motion to quash the search warrants because they were not returned within three days after issuance is "overruled."

Defendants' objections to the Bill of Particulars are "overruled."

Defendants' motion to suppress tape recorded conversations between Attorney Nick Roetzel and Attorney Bruce Miller is "overruled."

Defendants' Motion for an Evidentiary Hearing is "overruled" as the Court is unable to find a substantial showing of falsehood by the Affiant necessary to impair the validity of the search warrants. The Court further finds that the requisite probable cause was established by the Affidavit to justify the issuance of the search warrants.

The Court finds that in selected instances the searches conducted under the warrants were overbroad and that certain items seized must be suppressed from being entered into evidence. Those items which are to be suppressed are listed below by making reference to the specific item numbers on the Inventory Sheets attached to each particular search warrant. Where only the item number has been listed all the items denoted by that number are hereby ordered suppressed. Where specific items are listed following the item number only those items specifically listed are to be suppressed and all other items denoted by the item number are deemed admissable. All other items under each warrant that are not specifically denoted either by item number or by description are deemed admissable as to all Defendants.

I.

LAKEMORE PLAZA BINGO HALL
1900 Canton Road
Lakemore, Ohio

All items seized are admissable as to all Defendants

II.

TWO BUILDINGS AT
767 North Howard Street
Akron, Ohio

All items seized are admissable
as to all Defendants.

III.

1972 BUICK AUTOMOBILE
Ohio Registration A-9381-G
Owner: Gerald Hall

All items seized are admissable
as to all Defendants.

IV.

APARTMENT NO. 5, EXECUTIVE
TOWNHOUSE APARTMENTS
338 East Portage Trail
Cuyahoga Falls, Ohio

All items seized are admissable
as to all Defendants.

V.

TWO STORY HOUSE AT
877 Chalker Avenue
Akron, Ohio

Residence of: Raymond and
Cecilia Parks

THE FOLLOWING ITEMS ARE ORDERED SUPPRESSED:

Item No. 5	Item No. 20
Item No. 6	Item No. 21
Item No. 7	Item No. 22
Item No. 8	Item No. 33
Item No. 10	Item No. 35

Item No. 11	Item No. 38 - Keys & Jewelry only
Item No. 12	Item No. 39
Item No. 14	Item No. 40
Item No. 15	Item No. 42
Item No. 16	Item No. 44
Item No. 17	Item No. 45
Item No. 18	Item No. 46
Item No. 19	Item No. 47

All other items seized under the warrant are deemed admissable.

VI.

1977 CORDOBA COUPE
Ohio Registration B-1564-R
Owner: Harry Blackford

The following items are ordered suppressed:

Item No. 14
Item No. 16

All other items seized under the warrant are deemed admissable.

VII.

TWO STORY RESIDENCE AT
5982 Kungle Road
Franklin Township
Clinton, Ohio
Residence of: Harry Blackford

The following items are ordered suppressed:

Item No. 6 - Phone Books only
Item No. 11

All other items seized under the warrant are deemed admissable.

VIII.

1978 JAGUAR COUPE
Ohio Registration No. 313068
Owner: Nancy Kungle (Merlo)

The following items are ordered suppressed:

Item No. 2 - Pictures and change only

Item No. 3 - Garage Door Opener Only

All other items seized under the warrant are deemed admissable.

IX.

1974 OLDSMOBILE
V.I.N. Number 3V39T4E118678
Owner: Nancy Kunkel

All items seized are admissable as to all Defendants.

X.

APARTMENT 2-A at
1342 Weathervane Lane
Cedarwood Village
Akron, Ohio
Residence of: Joseph and Nancy Merlo

The following items are ordered suppressed:

Item No. 2
Item No. 4
Item No. 6
Item No. 7

All other items seized under the warrant are deemed admissable.

XI.

1974 OLDSMOBILE
Ohio Registration No. 292976
Owner: Sandra Brunton

All items seized under the warrant are admissable as to all Defendants.

XII.

TWO STORY HOUSE AT
2345 Iota Avenue
Cuyahoga Falls, Ohio
Residence of: Sandra Brunton

The following Items are ordered suppressed:

Item No. 1
Item No. 18 - Cassette Tapes Only
Item No. 19

All other items seized under the warrant are deemed admissable.

Dated at Ravenna, Ohio, this 9th day of February, 1979.

/S/_____
JOSEPH R. KAINRAD

THE SUPREME COURT OF OHIO

THE STATE OF OHIO,	)	1980 TERM
	)	
City of Columbus.	) To wit:	June 18, 1980

State of Ohio,	)	No. 80-248
	)	
Appellee,	)	
	)	APPEAL FROM THE
vs.	)	COURT OF APPEALS
	)	
Raymond Parks et al.,	)	
	)	for SUMMIT County
Appellant.	)	

This cause, here on appeal as of right from the Court of Appeals for SUMMIT County, was considered in the manner prescribed by law, and, no motion to dismiss such appeal having been filed, the Court sua sponte dismisses the appeal for the reason that no substantial constitutional questions exists herein.

It is further ordered that a copy of this entry be certified to the Clerk of the Court of Appeals for SUMMIT County for entry.

I, Thomas L. Startzman, Clerk of the Supreme Court of Ohio, certify that the foregoing entry was correctly copied from

the Journal of this Court.

Witness my hand and the seal of the Court this _____ day of _____ 19_____.

_____Clerk

_____Deputy

SUPREME COURT OF THE UNITED STATES

No. A-137

JOSEPH FRANCIS MERLO, RAYMOND PARKS AND HARRY BLACKFORD,

Petitioners,

v.

OHIO

ORDER EXTENDING TIME TO FILE PETITION FOR WRIT OF CERTIORARI

Upon Consideration of the application for petitioner(s),

It Is Ordered that the time for filing a petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including September 16, 1980.

/s/ Potter Stewart
Associate Justice of the Supreme Court of the United States

Dated this 8th

day of August, 1980.

CONSTITUTION OF THE UNITED STATES

FOURTH AMENDMENT

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated; and no Warrants shall issue but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

FIFTH AMENDMENT

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a

witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

SIXTH AMENDMENT

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

FOURTEENTH AMENDMENT

Section 1. All persons born or naturalized in the United States, and

subject to the jurisdiction thereof, are citizens of the United States and the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

§2913.02 Theft

(A) No person, with purpose to deprive the owner of property or services, shall knowingly obtain or exert control over either:

(1) Without the consent of the owner or person authorized to give consent;

(2) Beyond the scope of the express or implied consent of the owner or person authorized to give consent;

(3) By deception;

(4) By threat.

(B) Whoever violates this section is guilty of theft. If the value of the property or services stolen is less than one hundred fifty dollars, violation of this section is petty theft, a misdemeanor of the first degree. If the value of the property or services stolen is one hundred fifty dollars or more, or if the property stolen is any of the property listed in section

2913.71 of the Revised Code, or if the offender has previously been convicted of a theft offense, then violation of this section is grand theft, a felony of the fourth degree.

§2915.01 Definitions. (Pre 12-15-77)

As used in sections 2915.01 to 2915.12 of the Revised Code:

(A) "Bookmaking" means the business of receiving or paying off bets.

(B) "Bet" means the hazarding of anything of value upon the result of an event, undertaking, or contingency, but does not include a bona fide business risk.

(C) "Scheme of chance" means a lottery, numbers game, pool, or other scheme in which a participant gives a valuable consideration for a chance to win a prize.

(D) "Game of chance" means poker, craps, roulette, a slot machine, a punch board, or other game in which a player gives anything of value in the hope of gain, the outcome of

which is determined largely or wholly by chance.

(E) "Scheme or game of chance conducted for profit" means any scheme or game of chance designed to produce income for the person who conducts or operates the scheme or game of chance, but does not include a charitable bingo game.

(F) "Gambling device" means:

(1) A book, totalizer, or other equipment for recording bets;

(2) A ticket, token, or other device representing a chance, share, or interest of chance, except a charitable bingo game, or evidencing a bet;

(3) A deck of cards, dice, gaming table, roulette wheel, slot machine, punch board, or other apparatus designed for use in connection with a game of chance;

(4) Any equipment, device, apparatus, or paraphernalia specially designed for gambling purposes.

(G) "Gambling offense" means any of the following:

(1) A violation of section 2915.02, 2915.03, 2915.04, 2915.05, 2915.06, 2915.07, 2915.08, 2915.09, 2915.10, or 2915.11 of the Revised Code;

(2) A violation of an existing or former municipal ordinance or law of this or any other state of the United States substantially equivalent to any section listed in division (G)(1) of this section;

(3) An offense under an existing or former municipal ordinance or law of this or any other state or the United States, of which gambling is an element;

(4) A conspiracy or attempt to commit, or complicity in committing any offense under division (G)(1), (2), or (3) of this section.

(H) "Charitable organization" means any tax exempt religious, educational, veteran's, fraternal, service, nonprofit medical, volunteer rescue service, volunteer

firemen's, or senior citizen's organization. An organization is tax exempt if it is exempt from federal taxation under subsection 501(c)(3), 501(c)(4), 501(c)(8), 501(c)(10), or 501(c)(19) of the Internal Revenue Code. To qualify as a charitable organization, an organization, except a volunteer rescue service or volunteer firemen's organization, shall have been in continuous existence as such in this state for a period of two years immediately preceding the making of an application for a bingo license under section 2915.08 of the Revised Code.

(I) "Religious organization" means any church, body of communicants, or group that is not organized or operated for profit, that gathers in common membership for regular worship and religious observances.

(J) "Educational organization" means any organization within this state that is not organized for profit, the primary purpose of which is to educate and develop the capabilities of individuals through instruction,

and that operates or contributes to the support of a school, academy, college, or university.

(K) "Veteran's organization" means any veteran's organization or association that is incorporated by an act of the United States congress or any auxiliary unit of that veteran's organization or association.

(L) "Volunteer firemen's organization" means any organization of volunteer firemen, as defined in section 146.01 of the Revised Code, that is organized and operated exclusively to provide financial support for a volunteer fire department or a volunteer fire company.

(M) "Fraternal organization" means any society, order, or association within this state, except a college or high school fraternity, that is not organized for profit, that is a branch, lodge, or chapter of a national or state organization, that exists exclusively for the common business or brotherhood of its members, and that has

been in continuous existence in this state for a period of five years.

(N) "Volunteer rescue service organization" means any organization of volunteers organized to perform emergency medical service as defined in division (E) of section 4731.82 of the Revised Code.

(O) "Service organization" means any organization, not organized for profit, that is organized and operated exclusively to provide, or to contribute to the support of organizations or institutions organized and operated exclusively to provide, medical and therapeutic services for persons who are crippled, born with birth defects, or have any other mental or physical defect or to protect, or to contribute to the support of organizations or institutions organized and operated exclusively to protect, animals from inhumane treatment.

(P) "Nonprofit medical organization" means any organization, not organized for profit, that is organized and operated

exclusively to provide, or to contribute to the support of organizations or institutions organized and operated exclusively to provide, hospital, medical, research, or therapeutic services for the public.

(Q) "Senior citizen's organization" means any private organization, not organized for profit, that is organized and operated exclusively to provide recreational or social services for persons who are fifty-five years of age or older and that is described and qualified under subsection 501(c)(3) of the Internal Revenue Code.

(R) "Charitable bingo game" means any bingo game that is conducted by a charitable organization that has obtained a bingo license pursuant to section 2915.08 of the Revised Code and the proceeds of which are used for a charitable purpose.

(S) "Bingo" means:

(1) A game with all of the following characteristics:

(a) The participants use bingo cards

that are divided into twenty-five spaces arranged in five horizontal and five vertical rows of spaces, with each space, except the central space, being designated by a combination of a letter and a number and with the central space being designated as a free space;

(b) The participants cover the spaces on the bingo cards that correspond to combinations of letters and numbers that are announced by a bingo game operator;

(c) A bingo game operator announces combinations of letters and numbers that appear on objects that a bingo game operator selects by chance, either manually or mechanically, from a receptacle that contains seventy-five objects at the beginning of each game, each object marked by a different combination of a letter and a number that corresponds to one of the seventy-five possible combinations of a letter and a number that can appear on the bingo cards;

(d) The winner of the bingo game includes any participant who properly announces during the interval between the announcements of letters and numbers as described in division (S)(1)(c) of this section, that a predetermined and preannounced pattern of spaces has been covered on a bingo card being used by the participant.

(2) Any scheme or game other than a game as defined in division (S)(1) of this section with the following characteristics:

(a) The participants use cards, sheets, or other devices that are divided into spaces arranged in horizontal, vertical, or diagonal rows of spaces, with each space, except free spaces, being designated by a single letter, number, or symbol; by a combination of a letter and a number, a letter and a symbol, or a number and symbol; or by any combination of letters, numbers, and symbols, with some or none of the spaces being designated as a free, complimentary, or similar space;

(b) The participants cover the spaces

on the cards, sheets, or devices that correspond to letters, numbers, symbols, or combinations of such that are announced by a bingo game operator or otherwise transmitted to the participants;

(c) A bingo game operator announces, or otherwise transmits to the participants, letters, numbers, symbols, or any combination of such as set forth in division (S)(2) of this section that appear on objects that a bingo game operator selects by chance that correspond to one of the possible letters, numbers, symbols, or combinations of such that can appear on the bingo cards, sheets, or devices;

(d) The winner of the bingo game is any participant who properly announces that a predetermined and preannounced pattern of spaces has been covered on a card, sheet, or device being used by the participant.

(T) "Conduct" means to back, promote, organize, manage, carry on, or prepare for the operation of a scheme or game of chance

but does not include any act performed by a bingo game operator.

(U) "Bingo game operator" means any person, except security personnel, who performs work or labor at the site of a bingo game including, but not limited to, collecting money from participants, handing out bingo cards or objects to cover spaces on the bingo cards, selecting from a receptacle the objects that contain the combination of letters and numbers that appear on the bingo cards, calling out the combinations of letters and numbers, distributing prizes to the winner of the bingo game, and serving refreshments.

(V) "Participant" means any person who plays bingo by covering the spaces on a bingo card that correspond to combinations of letters and numbers that are announced by a bingo game operator.

(W) "Bingo session" means a period, not to exceed five continuous hours, during which a person conducts one or more bingo games.

(X) "Gross receipts" means all money or assets, including admission fees, that a person receives from a bingo session that the person conducts without the deduction of any amounts for prizes paid out during the session or for the expenses of conducting the bingo session.

(Y) "Security personnel" includes any person who is a sheriff, deputy sheriff, marshal, deputy marshal, township constable, or member of an organized police department of a municipal corporation or has successfully completed a peace officer's training course pursuant to sections 109.71 to 109.79 of the Revised Code and who is hired to provide security for the premises on which a bingo game is conducted.

(Z) "To use gross receipts for a charitable purpose" means that the proceeds of the bingo game are used by, or given, donated, or otherwise transferred to, any organization that is described in subsection 509(a)(1), 509(a)(2), or 509(a)(3) of the Internal

Revenue Code and is either a governmental unit or an organization that is tax exempt under subsection 501(c)(3) of the Internal Revenue Code that the proceeds of the bingo game are used by, or given, donated, or otherwise transferred to a veteran's organization, as defined in division (K) of this section, that is a post, chapter, or organization of war veterans, or an auxiliary unit or society of, or a trust or foundation for, any such post, chapter, or organization organized in the United States or any of its possession, at least seventy-five per cent of the members of which are war veterans and substantially all of the other members of which are individuals who are veterans (but not war veterans) or are cadets, or are spouses, widdows or widowers of war veterans, or such individuals, provided that no part of the net earnings of such post or organization inures to the benefit of any private shareholder or individual, and further provided that the bingo game proceeds are used by the

post or organization for the charitable purposes set forth in division (B)(12) of section 5739.02 of the Revised Code, awarding scholarships to or for attendance at an institution mentioned in division (B)(12) of section 5739.02 of the Revised Code, donated to a governmental agency, or used for nonprofit youth activities, promotion of patriotism, or disaster relief; that the proceeds of the bingo game are used by, or given, donated, or otherwise transferred to a fraternal organization that has been in continuance existence in this state for fifteen years for use exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals and contributions for such use would qualify as a deductible charitable contribution under subsection 170 of the Internal Revenue Code; or that the proceeds of the bingo game are used by a volunteer firemen's organization and are used by the organization for the purposes set forth in

division (L) of this section.

(AA) "Internal Revenue Code" means the "Internal Revenue Code of 1954," 68A Stat. 3, 26 U.S.C. 1, as now or hereafter amended.

§2915.02 Gambling.

(A) No person shall:

. . .

(2) Establish, promote, or operate, or knowingly engage in conduct that facilitates any scheme or game of chance conducted for profit.

. . .

(B) ...For purposes of division (A)(2) of this section, a person facilitates a scheme or game of chance conducted for profit if he in any way knowingly aids in the conduct or operation of any such scheme or game, including without limitation playing any such scheme or game.

(C) This section does not prohibit conduct in connection with gambling expressly permitted by law; does not apply to schemes

of chance conducted by a charitable organization that is tax exempt under subsection 501(c)(3) of the Internal Revenue Code, provided that all of the money or assets received from such scheme of chance after deduction only of prizes paid out during the conduct of the scheme of chance are used by, or given, donated, or otherwise transferred to, any organization that is described in subsection 509(a)(1), 509(a)(2), or 509(a)(3) of the Internal Revenue Code and is either a governmental unit or an organization that is tax exempt under subsection 501(c)(3) of the Internal Revenue Code; and does not apply to games of chance, except craps for money, roulette for money, and slot machines, that are conducted by charitable organizations that are tax exempt under subsection 501(c)(3) of the Internal Revenue Code, at the organizations' festivals, if the festivals are conducted for a period of four consecutive days or less and not more than twice a year.

(§2915.02) (Pre 12/15/77)

(D) Whoever violates this section is guilty of gambling, a misdemeanor of the first degree. If the offender has previously been convicted of any gambling offense, gambling is a felony of the fourth degree.

§2915.09 [Rules for conducting bingo.]

(A) A charitable organization that conducts a bingo game shall:

. . .

(2) Use all the gross receipts from the bingo game for paying prizes, for the charitable purposes listed in its bingo license application, for purchasing or leasing bingo cards and other equipment used in conducting the bingo game, for hiring security personnel for the bingo game, for advertising the bingo game, and for renting premises in which to conduct the bingo game.

. . .

(C) Whoever violates division (A)(2) of this section is guilty of illegally conducting a bingo game, a felony of the third

degree. Whoever violates division (A)(1), (A)(3), (A)(4), (A)(5), or (B) of this section is guilty of a minor misdemeanor. If the offender has previously been convicted of a violation of division (A)(1), (A)(3), (A)(4), (A)(5), or (B) of this section, a violation of division (A)(1), (A)(3), (A)(4), (A)(5), or (B) of this section is a misdemeanor of the first degree.

OHIO REVISED CODE

§2915.01(Post-December 15, 1977)*

(A) "Bookmaking" means the business of receiving or paying off bets.

(B) "Bet" means the hazarding of anything of value upon the result of an event, undertaking, or contingency, but does not include a bona fide business risk.

(C) "Scheme of chance" means a lottery, numbers game, pool, or other scheme in which a participant gives a valuable consideration for a chance to win a prize.

(D) "Game of chance" means poker, craps, roulette, a slot machine, a punch board, or other game in which a player gives anything of value in the hope of gain, the outcome of which is determined largely or wholly by chance.

* Amendments to the pre-December 15, 1977 Act are indicated by capitalization and, where appropriate, interlineation.

(E) "Scheme or game of chance conducted for profit" means any scheme or game of chance designed to produce income for the person who conducts or operates the scheme or game of chance, but does not include a charitable bingo game.

(F) "Gambling device" means:

(1) A book, totalizer, or other equipment for recording bets;

(2) A ticket, token, or other device representing a chance, share, or interest in a scheme of chance, except a charitable bingo game, or evidencing a bet;

(3) A deck of cards, dice, gaming table, roulette wheel, slot machine, punch board, or other apparatus designed for use in connection with a game of chance;

(4) Any equipment, device, apparatus, or paraphernalia specially designed for gambling purposes.

(G) "Gambling offense" means any of the following:

(1) A violation of section 2915.02, 2915.03, 2915.04, 2915.05, 2915.06, 2915.07, 2915.08, 2915.10, or 2915.11 of the Revised Code;

(2) A violation of an existing or former municipal ordinance or law of this or any state or the United States substantially equivalent to any section listed in division (G)(1) of this section;

(3) An offense under an existing or former municipal ordinance or law of this or any other state or the United States, of which gambling is an element;

(4) A conspiracy or attempt to commit, or complicity in committing any offense under division (G)(1), (2), or (3) of this section.

(H) "Charitable organization" means any tax exempt religious, educational, veteran's fraternal, service, nonprofit medical, volunteer rescue service, volunteer firemen's, ~~or~~ senior citizen's. YOUTH ATHLETIC, OR YOUTH ATHLETIC PARK organization.

An organization is tax exempt if ~~it~~ THE ORGANIZATION IS, AND HAS RECEIVED FROM THE INTERNAL REVENUE SERVICE A DETERMINATION LETTER THAT IS CURRENTLY IN EFFECT, STATING THAT THE ORGANIZATION is, exempt from federal INCOME taxation under SUBSECTION 501(a) AND DESCRIBED IN subsection 501(c)(3), 501(c)(4), 501(c)(8), 501(c)(10), or 501(c)(19) of the Internal Revenue Code. To qualify as a charitable organization, an organization, except a volunteer rescue service or volunteer firemen's organization, shall have been in continuous existence as such in this state for a period of two years immediately preceding EITHER the making of an application for a bingo license under section 2915.08 of the Revised Code OR THE CONDUCTING OF ANY SCHEME OF CHANCE OR GAME OF CHANCE AS PROVIDED IN DIVISION (C) OF SECTION 2915.02 OF THE REVISED CODE.

(I) "Religious organization" means any church, body of communicants, or group that

is not organized or operated for profit, that gathers in common membership for regular worship and religious observances.

(J) "Educational organization" means any organization within this state that is not organized for profit, the primary purpose of which is to educate and develop the capabilities of individuals through instruction, and that operates or contributes to the support of a school, academy, college or university.

(K) "Veteran's organization" means any veteran's organization or association that is incorporated by an act of the United States congress or any auxiliary unit of that veteran's organization or association, AND ANY POST OF A NATIONAL VETERAN'S ORGANIZATION THE NATIONAL DUES PAYING MEMBERSHIP OF WHICH NUMBERS AT LEAST FIVE THOUSAND PERSONS, WHETHER OR NOT INCORPORATED BY AN ACT OF THE UNITED STATES CONGRESS, WHICH POST HAS BEEN IN CONTINUOUS EXISTENCE AS SUCH

IN THIS STATE FOR AT LEAST TWENTY YEARS AND HAS BEEN INCORPORATED AS A NONPROFIT CORPORATION FOR AT LEAST FIVE YEARS.

(L) "Volunteer firemen's organization" means any organization of volunteer firemen, as defined in section 146.01 of the Revised Code, that is organized and operated exclusively to provide financial support for a volunteer fire department or a volunteer fire company.

(M) "Fraternal organization" means any society, order, or association within this state, except a college or high school fraternity, that is not organized for profit, that is a branch, lodge, or chapter of a national or state organization, that exists exclusively for the common business or brotherhood of its members, and that has been in continuous existence in this state for a period of five years.

(N) "Volunteer rescue service organization" means any organization of volunteers organized to perform emergency medical

service as defined in division (E) of section 4731.82 of the Revised Code.

(O) "Service organization" means any organization, not organized for profit, that is organized and operated exclusively to provide, or to contribute to the support of organizations or institutions organized and operated exclusively to provide, medical and therapeutic services for persons who are crippled, born with birth defects, or have any other mental or physical defect or THOSE ORGANIZED AND OPERATED EXCLUSIVELY to protect, or to contribute to the support of organizations or institutions organized and operated exclusively to protect, animals from inhumane treatment.

(P) "Nonprofit medical organization" means any organization; ~~not-organized-for profit~~, that ~~is-organized~~ HAS BEEN INCORPORATED AS A NONPROFIT CORPORATION FOR AT LEAST FIVE YEARS and THAT HAS CONTINUOUSLY OPERATED AND WILL BE operated exclusively to

provide, or to contribute to the support of organizations or institutions organized and operated exclusively to provide, hospital, medical, research, or therapeutic services for the public.

(Q) "Senior citizen's organization" means any private organization, not organized for profit, that is organized and operated exclusively to provide recreational or social services for persons who are fifty-five years of age or older and that is described and qualified under subsection 501(c)(3) of the Internal Revenue Code.

(R) "Charitable bingo game" means any bingo game that is conducted by a charitable organization that has obtained a bingo license pursuant to section 2915.08 of the Revised Code and the proceeds of which are used for a charitable purpose.

(S) "Bingo" means:

(1) A game with all of the following characteristics:

(a) The participants use bingo cards that are divided into twenty-five spaces arranged in five horizontal and five vertical rows of spaces, with each space, except the central space, being designated by a combination of a letter and a number and with the central space being designated as a free space;

(b) The participants cover the spaces on the bingo cards that correspond to combinations of letters and numbers that are announced by a bingo game operator;

(c) A bingo game operator announces combinations of letters and numbers that appear on objects that a bingo game operator selects by chance, either manually or mechanically, from a receptacle that contains seventy-five objects at the beginning of each game, each object marked by a different combination of a letter and a number that corresponds to one of the seventy-five possible combinations of a letter and a number that can appear on the bingo cards;

(d) The winner of the bingo game includes any participant who properly announces during the interval between the announcements of letters and numbers as described in division (S)(1)(c) of this section, that a predetermined and preannounced pattern of spaces has been covered on a bingo card being used by the participant.

(2) Any scheme or game other than a game as defined in division (S)(1) of this section with the following characteristics:

(a) The participants use cards, sheets, or other devices that are divided into spaces arranged in horizontal, vertical, or diagonal rows of spaces, with each space, except free spaces, being designated by a single letter, number, or symbol; by a combination of letters, numbers or symbols; by a combination of a letter and a number, a letter and a symbol, or a number and a symbol; or by any combination of letters, numbers and symbols, with some or none of the spaces being designated as a free, complimentary, or similar

space;

(b) The participants cover the spaces on the cards, sheets, or devices that correspond to letters, numbers, symbols, or combinations of such that are announced by a bingo game operator or otherwise transmitted to the participants;

(c) A bingo game operator announces, or otherwise transmits to the participants, letters, numbers, symbols, or any combination of such as set forth in division (S)(2)(a) of this section that appear on objects that a bingo game operator selects by chance that correspond to one of the possible letters, numbers, symbols, or combinations of such that can appear on the bingo cards, sheets, or devices;

(d) The winner of the bingo game is any participant who properly announces that a predetermined and preannounced pattern of spaces has been covered on a card, sheet, or device being used by the participant.

(T) "Conduct" means to back, promote, organize, manage, carry on, or prepare for the operation of a scheme or game of chance but does not include any act performed by a bingo game operator.

(U) "Bingo game operator" means any person, except security personnel, who performs work or labor at the site of a bingo game including, but not limited to, collecting money from participants, handing out bingo cards or objects to cover spaces on the bingo cards, selecting from a receptacle the objects that contain the combination of letters and numbers that appear on the bingo cards, calling out the combinations of letters and numbers, and distributing prizes to the winner of the bingo game, and serving refreshments.

(V) "Participant" means any person who plays bingo by covering the spaces on a bingo card that correspond to combinations

of letters and numbers that are announced by a bingo game operator.

(W) "Bingo session" means a period, not to exceed five continuous hours, during which a person conducts one or more bingo games.

(X) "Gross receipts" means all money or assets, including admission fees, that a person receives from a bingo session that the person conducts without the deduction of any amounts for prizes paid out during the session or for the expenses of conducting the bingo session.

(Y) "Security personnel" includes any person who either is a sheriff, deputy sheriff, marshal, deputy marshal, township constable, or member of an organized police department of a municipal corporation or has successfully completed a peace officer's training course pursuant to sections 109.71 to 109.79 of the Revised Code and who is hired to provide security for the premises on which a bingo game is conducted.

(Z) "To use gross receipts for a charitable purpose" means that the proceeds of the bingo game are used by, or given, donated, or otherwise transferred to, any organization that is described in subsection 509(a)(1), 509(a)(2), or 509(a)(3) of the Internal Revenue Code and is either a governmental unit or an organization that is tax exempt under subsection 501(a) AND DESCRIBED IN SUBSECTION 501(c)(3) of the Internal Revenue Code that the proceeds of the bingo game are used by, or given, donated, or otherwise transferred to a veteran's organization, as defined in division (K) of this section, that is a post, chapter, or organization of war veterans, or an auxiliary unit or society of, or a trust or foundation for, any such post, chapter, or organization organized in the United States or any of its possessions, at least seventy-five per cent of the members of which are individuals who are veterans (but not war veterans) or are cadets, or are spouses, widows or widowers of war veterans,

or such individuals, provided that no part of the net earnings of such post or organization inures to the benefit of any private shareholder or individual, and further provided that the bingo game proceeds are used by the post or organization for the charitable purposes set forth in division (B)(12) of section 4739.02 of the Revised Code, awarding scholarships to or for attendance at an institution mentioned in division (B)(12) of section 5739.02 of the Revised Code, donated to a governmental agency, or used for nonprofit youth activities, promotion of patriotism, or disaster relief; that the proceeds of the bingo game are used by, or given, donated, or otherwise transferred to a fraternal organization that has been in continuous existence in this state for fifteen years for use exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals and

contributions for such use would qualify as a deductible charitable contribution under subsection 170 of the Internal Revenue Code; or that the proceeds of the bingo game are used by a volunteer firemen's organization and are used by the organization for the purposes set forth in division (L) of this section.

(AA) "Internal Revenue Code" means the "Internal Revenue Code of 1954," 68A Stat. 3, 26 U.S.C. 1, as now or hereafter amended.

(BB) "YOUTH ATHLETIC ORGANIZATION" MEANS ANY ORGANIZATION, NOT ORGANIZED FOR PROFIT, THAT IS ORGANIZED AND OPERATED EXCLUSIVELY TO PROVIDE FINANCIAL SUPPORT TO, OR TO OPERATE, ATHLETIC ACTIVITIES FOR PERSONS WHO ARE EIGHTEEN YEARS OF AGE OR YOUNGER BY MEANS OF SPONSORING, ORGANIZING, OPERATING, OR CONTRIBUTING TO THE SUPPORT OF AN ATHLETIC TEAM, CLUB, LEAGUE, OR ASSOCIATION.

(CC) "YOUTH ATHLETIC PARK ORGANIZATION" MEANS ANY ORGANIZATION, NOT ORGANIZED FOR PROFIT, THAT OWNS, OPERATES, AND MAINTAINS PLAYING FIELDS THAT ARE USED AT LEAST ONE HUNDRED DAYS PER YEAR FOR ATHLETIC ACTIVITIES BY YOUTH ORGANIZATIONS AS DEFINED IN DIVISION (BB) OF SECTION 2915.01 OF THE REVISED CODE AND ARE NOT USED FOR ANY PROFIT-MAKING ACTIVITY AT ANY TIME DURING THE YEAR, AND WHICH USES THE PROCEEDS OF THE BINGO GAME EXCLUSIVELY FOR THE OPERATION, MAINTENANCE, AND IMPROVEMENT OF SUCH PLAYING FIELDS.

Sec. 2915.02

(A) No person shall:

. . .

(2) Establish, promote, or operate, or knowingly engage in conduct that facilitates any scheme or game of chance conducted for profit;

. . .

(B) For purposes of division (A)(1)

of this section, a person facilitates bookmaking if he in any way knowingly aids an illegal bookmaking operation, including without limitation placing a bet with a person engaged in or facilitating illegal bookmaking. For purposes of division (A)(2) of this section, a person facilitates a scheme or game of chance conducted for profit if he in any way knowingly aids in the conduct or operation of any such scheme or game, including without limitation playing any such scheme or game.

(C) This section does not prohibit conduct in connection with gambling expressly permitted by law~~; does not apply to schemes~~.

(D) THIS SECTION DOES NOT APPLY TO:

(1) SCHEMES of chance conducted by a charitable organization that is, AND HAS RECEIVED FROM THE INTERNAL REVENUE SERVICE A DETERMINATION LETTER THAT IS CURRENTLY IN EFFECT, STATING THAT THE ORGANIZATION IS, ~~tax~~ exempt FROM FEDERAL INCOME TAXATION under

subsection 501(a) AND DESCRIBED IN SUBSECTION 501(c)(3) of the Internal Revenue Code, provided that all of the money or assets received from such scheme of chance after deduction only of prizes paid out during the conduct of the scheme of chance are used by, or given, donated, or otherwise transferred to, any organization that is described in subsection 509(a)(1), 509(a)(2), or 509(a)(3) of the Internal Revenue Code and is either a governmental unit or an organization that is tax exempt under SUBSECTION 501(a) AND DESCRIBED IN subsection 501(c)(3) of the Internal Revenue Code. AND PROVIDED THAT THE SCHEME OF CHANCE IS NOT CONDUCTED DURING, OR WITHIN TEN HOURS OF, A BINGO GAME CONDUCTED FOR AMUSEMENT PURPOSES ONLY PURSUANT TO SECTION 2915.12 OF THE REVISED CODE; ~~and does not apply to games of chance, except~~

(2) GAMES OF CHANCE, IF ALL OF THE FOLLOWING APPLY:

(a) THE GAMES OF CHANCE ARE NOT craps for money, roulette for money, ~~and~~ OR slot machines; ~~that are~~;

(b) THE GAMES ARE conducted by A charitable ~~organizations~~ ORGANIZATION that ~~are tax~~ IS, AND HAS RECEIVED FROM THE INTERNAL REVENUE SERVICE A DETERMINATION LETTER THAT IS CURRENTLY IN EFFECT, STATING THAT THE ORGANIZATION IS, exempt FROM FEDERAL INCOME TAXATION under SUBSECTION 501(a) AND DESCRIBED IN subsection 501(c)(3) of the Internal Revenue Code; ~~at the organizations' festivals, if the~~;

(c) THE GAMES ARE CONDUCTED AT festivals OF THE ORGANIZATION THAT are conducted for a period of four consecutive days or less and not more than twice a year, AND ARE CONDUCTED ON PREMISES OWNED BY THE CHARITABLE ORGANIZATION FOR A PERIOD OF NO LESS THAN ONE YEAR IMMEDIATELY PRECEDING THE CONDUCTING OF THE GAMES OR ON PREMISES LEASED FROM A GOVERNMENTAL UNIT;

(d) ALL OF THE MONEY OR ASSETS

RECEIVED FROM THESE GAMES OR CHANCE AFTER DEDUCTION ONLY OF PRIZES PAID OUT DURING THE CONDUCT OF THE GAMES OF CHANCE ARE USED BY, OR GIVEN, DONATED, OR OTHERWISE TRANSFERRED TO, ANY ORGANIZATION THAT IS DESCRIBED IN SUBSECTION 509(a)(1), 509(a)(2), OR 509(a)(3) OF THE INTERNAL REVENUE CODE AND IS EITHER A GOVERNMENTAL UNIT OR AN ORGANIZATION THAT IS TAX EXEMPT UNDER SUBSECTION 501(a) AND DESCRIBED IN SUBSECTION 501(c)(3) OF THE INTERNAL REVENUE CODE;

(e) THE GAMES ARE NOT CONDUCTED DURING, OR WITHIN TEN HOURS OF, A BINGO GAME CONDUCTED FOR AMUSEMENT ONLY PURSUANT TO SECTION 2915.12 OF THE REVISED CODE.

NO PERSON SHALL RECEIVE ANY COMMISSION, WAGE, SALARY, REWARD, TIP, DONATION, GRATUITY, OR OTHER FORM OF COMPENSATION, DIRECTLY OR INDIRECTLY, FOR OPERATING OR ASSISTING IN THE OPERATION OF ANY SCHEME OR GAME OF CHANCE.

(E) DIVISION (D) OF THIS SECTION SHALL NOT BE CONSTRUED TO AUTHORIZE THE

SALE, LEASE, OR OTHER TEMPORARY OR PERMANENT TRANSFER OF THE RIGHT TO CONDUCT SCHEMES OF CHANCE OR GAMES OF CHANCE, AS GRANTED BY DIVISION (D) OF THIS SECTION, BY ANY CHARITABLE ORGANIZATION THAT IS GRANTED THAT RIGHT.

~~(B)~~ (F) Whoever violates this section is guilty of gambling, a misdemeanor of the first degree. If the offender has previously been convicted of any gambling offense, gambling is a felony of the fourth degree.

Sec. 2915.09

(A) A charitable organization that conducts a bingo game shall:

. . .

(2) Use all of the gross receipts from the bingo game for paying prizes, for the charitable purposes listed in its bingo license application, for purchasing or leasing bingo cards and other equipment

used in conducting the bingo game, ~~for~~ hiring security personnel for the bingo game, for OR advertising the bingo game PROVIDED THAT THE AMOUNT OF THE RECEIPTS SO SPENT IS NOT MORE THAN IS CUSTOMARY AND REASONABLE FOR A SIMILAR PURCHASE, LEASE, HIRING, OR ADVERTISING, ~~and~~ for renting premises in which to conduct the bingo game, AND FOR THE MAINTENANCE, EXPENSE, AND COST OF A BUILDING OWNED BY THE CHARITABLE ORGANIZATION IN WHICH THE BINGO GAME IS CONDUCTED, EXCEPT THAT, FOR EACH BINGO SESSION, THE TOTAL AMOUNT OF THE GROSS RECEIPTS USED FOR THE MAINTENANCE, EXPENSE, AND COST OF THE BUILDING SHALL NOT EXCEED THE LESSER OF TWO HUNDRED FIFTY DOLLARS OR TWENTY-FIVE PER CENT OF THE GROSS RECEIPTS FROM THE SESSION;

. . .

(E) Whoever violates division (A)(2) of this section is guilty of illegally conducting a bingo game, a gelony of the third degree. Whoever violates division (A)(1),

~~(A)~~(3), ~~(A)~~(4), ~~(A)~~ OR (5), or (B)_, OR (C) of this section is guilty of a minor misdemeanor. If the offender has previously been convicted of a violation of division (A)(1), ~~(A)~~(3), ~~(A)~~(4), ~~(A)~~ OR (5), or (B)_, OR (C) of this section, a violation of division (A)(1), ~~(A)~~(3, ~~(A)~~(4),~~(A)~~ OR (5), or (B)_, OR (C) of this section is a misdemeanor of the first degree.

OHIO REVISED CODE

Sec. 2923.04 Engaging in organized crime.

(A) No person, with purpose to establish or maintain a criminal syndicate or to facilitate any of its activities, shall do any of the following:

(1) Organize or participate in organizing a criminal syndicate or any of its activities;

(2) Provide material aid to a criminal syndicate or any of its activities, whether such aid is in the form of money or other property, or credit;

(3) Manage, supervise, or direct any of the activities of a criminal syndicate, at any level of responsibility;

(4) Furnish legal, accounting, or other managerial services to a criminal syndicate;

(5) Commit, or conspire or attempt to commit, or act as an accomplice in the commission of, any offense of a type in which a criminal syndicate engages on a continuing

basis;

(6) Commit, or conspire or attempt to commit, or act as an accomplice in the commission of bribery in violation of section 2921.02 of the Revised Code.

(B) Whoever violates this section is guilty of engaging in organized crime, a felony of the first degree.

(C) As used in this section, "criminal syndicate" means five or more persons collaborating to promote or engage in any of the following on a continuing basis:

(1) Extortion or coercion in violation of section 2905.11 or 2905.12 of the Revised Code;

(2) Compelling or promoting prostitution, or procuring in violation of section 2907.21, 2907.22, or 2907.23 of the Revised Code;

(3) Any theft offense as defined in section 2913.01 of the Revised Code;

(4) Any gambling offense as defined

in section 2915.01 of the Revised Code;

(5) Illegal trafficking in drugs of abuse, in intoxicating or spiritous liquor, or in deadly weapons or dangerous ordnance as defined in section 2923.11 of the Revised Code;

(6) Lending at usurious interest, and enforcing repayment by illegal means;

(7) Any offense, for the purpose of gain.

(D) A criminal syndicate retains its character as such even though one or more of its members does not know the identify of one or more other members, and even though its membership changes from time to time.

IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO

STATE OF OHIO,	)	CASE NO. 78-06-0663
	)	
Plaintiff,	)	JUDGE JOSEPH KAINRAD
	)	
-vs-	)	SUPPLEMENTARY AFFIDAVIT IN SUPPORT OF EVIDENTIARY HEARING ON SEARCH WARRANT AFFIDAVIT
	)	
JOSEPH FRANCIS MERLO, et al.,	)	
	)	
Defendants.	)	

STATE OF OHIO)
) SS:
COUNTY OF CUYAHOGA)

George Wm. Palda, being first duly sworn on oath, according to law, deposes and states that:

1. I am one of the attorneys for Joseph Francis Merlo and Nancy Merlo in the above-captioned matter.

2. As a result of my representation of the above-named clients, I gained knowledge of facts which demonstrated that false statements, knowingly and intentionally, or with reckless disregard of the truth, were included by Det. Eugene L. Maurer in the affidavit he signed for the search warrants

obtained in connection with this case on June 9, 1978.

3. As a result of this knowledge, I swore to and filed with this Court, for an in camera inspection, an affidavit in support of an evidentiary hearing. That affidavit is hereby incorporated by reference herein and is attached as Exhibit A.

4. Since the filing of the affidavit referred to in paragraph 3 above (Exhibit A), I have gained further knowledge of facts which show other false statements, knowingly and intentionally, or with reckless disregard of the truth, were included by Det. Eugene Maurer, in the affidavit which he signed for the search warrants obtained in connection with this case on June 9, 1978.

5. In paragraph number five (5) of the recitation of facts on the fourth page in the search warrant affidavit, Detective Maurer claimed that "the receipts and nightly records from each of the bingo games" were "traced by surveillance from the bingo

halls to the residences of the operators and then traced the following day to an apartment in Akron, Ohio, owned by Joseph Francis Merlo...."

6. The facts which Detective Maurer listed, in the same paragraph, in support of the conclusion of a transfer of records and receipts were that "canvas bags" were taken from the Lakemore Bingo Hall by Ray and Cecilia Parks to their residence.

7. Detective Maurer also stated in paragraph number five of his affidavit that Cecilia Parks "loads the bags back into the Pinto...and transports them to Joseph Merlo's apartment...." Detective Maurer continued in his affidavit that "[a]fter the money from both games has arrived at the Merlo apartment, the pattern has consistently been the same....Sandy Brunton... would arrive at the Merlo apartment, and would take from the apartment the same canvas bags. She would then transport them

to her residence...." (Emphasis added).

8. The statements by Detective Maurer that the same canvas bags were transported from the bingo halls to the operators' residences, then to Joseph Merlo's apartment and then to Sandra Brunton's apartment are false.

9. At the time Detective Maurer signed the affidavit, surveillance, in which he had participated and was aware, demonstrated clearly that the canvas bags which came from the bingo halls were not seen being taken from the operators' residences and transported to Joseph Merlo's apartment. Nor was Sandra Brunton seen taking the same canvas bags from the Merlo apartment to her residence.

10. Sworn testimony in the related case of State v. Bruce Miller by Summit County Sheriff's Department personnel, including Detective Maurer, demonstrates that collored canvas bags, green in color, were taken from the Lakemore Bingo Hall by Ray Parks (testimony of Detectives Maurer, Padrutt and Bryant).

11. The testimony of Detectives Maurer, Padrutt and Bryant showed that neither Ray nor Cecilia Parks ever were seen leaving their residence and bringing green or other colored canvas bags to the Merlo residence. Their testimony shows that Cecilia Parks was seen only with a large brown vinyl suit bag. This testimony is confirmed by the surveillance photographs taken at the Parks residence and the Merlo apartment by the detectives and presently on file with the Court in the related case of State v. Bruce Miller.

12. The same surveillance photographs also show that Sandra Brunton was not observed with the same green or colored canvas bags as were taken from the bingo halls.

13. The testimony of Detective Maurer in the related case of State v. Miller and the surveillance photographs show that Harry Blackford was seen going to and at the Merlo apartment only with a tan canvas gym bag. This testimony is confirmed by surveillance

photographs on file in the related case of State v. Miller.

14. If the false statements are deleted from the affidavit for the search warrant submitted by Detective Maurer, there is no factual connection between the bingo halls and the Merlo or Brunton residences and no probable cause to support a search of those residences or the automobiles belonging to defendants Merlo or defendant Brunton.

15. If the false statements concerning transportation of receipts and records are deleted from the affidavit along with the other false statements which were included in the Maurer affidavit and shown in the affidavit previously submitted by me, there was no probable cause to issue any search warrants.

16. The affiant requests an in camera inspection of these affidavits by this Court.

18. Further the affiant sayeth naught.

/S/_____
George Wm. Palda

SWORN TO BEFORE ME and subscribed in my presence this 8th day of February, 1979.

/S/_____
J. Michael Murray
Notary Public

IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO

STATE OF OHIO,	)	CASE NO. CR78-06-0663
	)	
Plaintiff,	)	JUDGE JOSEPH KAINRAD
	)	
-vs-	)	AFFIDAVIT IN SUPPORT OF EVIDENTIARY HEARING ON SEARCH WARRANT AFFIDAVIT
	)	
JOSEPH FRANCIS MERLO, et al.,	)	
	)	
Defendants.	)	

STATE OF OHIO)
) SS:
COUNTY OF CUYAHOGA)

George Wm. Palda, being first duly sworn according to law, deposes and states that:

1. He is the attorney for Joseph Francis Merlo and Nancy Merlo in the above-captioned matter.

2. As a result of his representation of the above-named clients, he has gained knowledge of facts which show false statements, knowingly and intentionally or with reckless disregard of the truth, were included by Det. Eugene L. Maurer, in the

affidavit for the search warrants obtained in connection with this case on June 9, 1978.

3. In paragraph two of the recitation of facts in the affidavit, Det. Maurer claimed that the attendance shown by the bingo operators at both locations in the reports submitted to the Attorney General were inconsistent with the actual counts taken by the Attorney General during formal audits.

4. In paragraph three of the recitation of facts in the affidavit, Det. Maurer stated that the average daily reported figures for the Mahoning Plaza bingo game from the reports submitted by the operators to the Attorney General were not available at the time the affidavit was signed.

5. Both of the above statements by the affiant are false.

6. The statement by Det. Maurer in paragraph three in regard to the unavailability of average daily figures is false from the face of the affidavit. Det. Maurer

stated in paragraph one of the recitation of facts that he reviewed all the audits of the two bingo games named in the affidavit for the warrants. Det. Maurer also stated in paragraph two of the recitation of facts that he had reports from both of the bingo games which were submitted to the Attorney General. The average daily figures for the Mahoning game were available both from the audits and the reports to the Attorney General which Det. Maurer states were in his possession.

7. The statement by Det. Maurer in paragraph two of the recitation of facts in the affidavit concerning the inconsistency in attendance figures can be shown to be false by an examination of the reports submitted to the Attorney General and the audit reports supplied to Det. Maurer by the Attorney General's office, both of which Det. Maurer reviewed according to his statements in the affidavit.

8. If the attendance figures listed in the audit which were available to Det.

Maurer but omitted from the affidavit had been included, the audit figures would have been consistent with the attendance figures in the reports filed by the bingo operators with the Attorney General.

9. If the average daily reported figures for the Mahoning Plaza bingo game which were available to Det. Maurer had been included in the affidavit, they would have been consistent with the gross receipts figures of the audits conducted at the Mahoning Plaza bingo game which were listed in paragraph three of the recitation of facts by Det. Maurer.

10. If the false statements set out above are struck from the affidavit for the search warrants, sufficient probable cause for the issuance of the warrants would not exist.

11. Further the affiant sayeth naught.

_____

George Wm. Palda

SWORN TO BEFORE ME and subscribed in my presence this _____ day of January, 1979.

_____
Notary Public

STATE OF OHIO)
) SS:
SUMMIT COUNTY)

AFFIDAVIT FOR SEARCH WARRANT

The undersigned, being duly sworn, deposes and says:

My name is EUGENE L. MAURER, I am a detective with the Summit County Sheriff's Office, assigned to the Organized Crime Unit. I have been engaged in the investigation of illegal bingo in Summit County since February of 1977 when the Ohio laws relating to bingo changed. I have been engaging in an investigation of the Boardwalk Bingo in the Lakemore Plaza, Village of Lakemore, Ohio, and in the Mahoning Plaza Bingo in the Mahoning Plaza in Canton, Ohio, since April of 1977. Our investigation has revealed that the two games listed above are conducted in violation of Ohio Revised Code 2915.09 and 2923.04. Affiant further states that supplies, books and records and proceeds of illegal games and gambling

paraphernalia are being kept at the following locations and that these items are evidence of the crimes of Conducting An Illegal Bingo Game, in violation of 2915.09 and Engaging In Organized Crime, in violation of 2923.04, or are fruits of those crimes:

1) The Lakemore Plaza Bingo Hall, located in Rooms 128-170 at the Lakemore Plaza at 1900 Canton Road, Village of Lakemore, Ohio, and further described as a single story commercial structure, brick with sidewalk overhang, with glass fronts, with front and rear multiple entrance and exit doors, and further having a large hall interior and an office within that hall, and further having a large sign over the sidewalk overhand in the front that says Boardwalk Bingo.

2) The Mahoning Plaza Bingo Hall, located at the Mahoning Road Plaza at 2915 Mahoning Road, Canton, Ohio, and further described as a one story commercial structure, brick and steel with a glass front with multiple entrance and exit doors at both front

and rear and further having a sign with the word Bingo, and further described as a large hall interior with an office inside the hall.

3) An apartment, Number 2-A, located at 1342 Weathervane Lane in Cedarwood Village in Akron, Ohio, and further described as a three story brick structure, natural and brown, containing multiple apartments and specifically, this apartment being identified as apartment 2-A on the second floor in the main section of the building, described as 1342 Weathervane Lane, and known as the residence of Joseph Francis Merlo and Nancy Kungle Merlo.

4) A two story frame house, wood and aluminum siding in white with green shutters with an attached front porch and front, side and rear entrance doors. A single family dwelling, located at 877 Chalker Avenue, Akron, Ohio and known as the residence of Raymond J. Parks and Cecelia Blackburn Parks and is also the business address of A. A. A. Concessions.

5) A single family residence described as a two story frame dwelling, with wood and aluminum siding, white in color with a garage and front, rear and garage entrance doors, located at 5982 Kungle Road in Franklin Township, Clinton, Ohio and known to be the residence of Harry S. Blackford and also the business address of City Novelty.

6) A single family residence, described as a one story frame dwelling with wood siding, white in color, with a garage and front and rear entrance doors and garage doors, located at 1321 Benton Avenue, Barberton, Ohio and known as the residence of Gerald Hall.

7) A single family residence, described as a two story frame dwelling with wood siding, yellow in color, with front, side and rear entrance doors, and located at 2345 Iota Avenue, Cuyahoga Falls, Ohio, and further known as the residence of Sandra Brunton.

8) Two buildings located at 767 North Howard Street in the City of Akron, Ohio, and further described as the first building being a two story commercial and residential wood frame structure, white in color, with a front attached porch, and front, side and rear entrance doors. The second building being a detached garage, wooden frame structure, white in color, with two car capacity to the rear of the building described as 767 North Howard Street. Those buildings being the business address for City Supply Company.

9) An apartment and attached garage, described as apartment number 5 in the Executive Townhouse Apartments, located at 338 East Portage Trail, in the City of Cuyahoga Falls, Ohio. The entrance to this apartment building is on School Street, and the garage is attached as part of the building that physically houses the apartment.

10) A 1978 Jaguar Coupe, Ohio registration 313068, chocolate brown in color, the owner being Nancy Kungle, 877 Chalker Street, Akron, Ohio.

11) A 1978 Cadillac Coupe, Ohio registration D-917-K, brown over brown in color, the owner being Dameco, Inc. (Leasing Company), Tallmadge, Ohio.

12) A 1976 Pinto Station Wagon, Ohio registration D-334-K, brown in color, with wood panels, the owner being Cecelia Blackburn (Parks), 767 North Howard Street, Akron, Ohio.

13) A 1977 Cordoba Coupe, Ohio registration B-1564-R, rust in color with a black vinyl top, the owner being Harry S. Blackford, 5982 Kungle Road, Clinton, Ohio, said vehicle has no front license plate.

14) A 1971 Chevrolet Impala, Ohio registration C-135-J, black and metallic blue in color, the owner being Jeannie Turkovich, 1033 Perry Avenue, Norton, Ohio.

15) A 1974 four-door, full size Oldsmobile, Ohio registration 292976, black and brown in color, the owner being Sandra Brunton, 2345 Iota Avenue, Cuyahoga Falls, Ohio.

16) A 1972 two-door full size Buick, Ohio registration A-9381-G, maroon in color with a black vinyl top, the owner being Gerald Hall, 1033 Perry Avenue, Norton, Ohio.

17) A 1974 four-door Oldsmobile Sedan, maroon in color, VIN number 3V39T4E118678, owned by Nancy J. Kunkel, 877 Chalker Street, Akron, Ohio.

THIS KNOWLEDGE IS BASED ON THE FOLLOWING FACTS:

1. The affiant has been involved in investigation of illegal bingo activities in this county since February of 1977 and has been in charge of all illegal bingo activity investigation in this county since January of 1978. In that capacity, the affiant has directed the activities of all sheriff's

personnel assigned to investigate illegal bingo, has reviewed all the reports concerning their investigations, and has coordinated the investigation with the Ohio Attorney General's Office and has reviewed all the audits of all the bingo games conducted in this county, specifically the two games in this Affidavit for Search Warrant.

2. Affiant has been directly involved in the investigation of the two listed bingo games since April of 1977, and has personally observed and read reports of the other police officers who observed the games on a regular basis. During this time period crowd estimates have been made by Summit County Deputy Sheriffs under the affiant's command, and in the 20 plus times that estimates were made they range from 400 to 650 people attending each game on a given evening. These estimates were confirmed by the two most recent estimates of Sunday, June 4, 1978 and Thursday, June 8, 1978. Attorney General reports in my possession indicate

that the bingo operators at both locations report an average crowd of 300 to 400 people per night. This is inconsistent with the estimates of the Sheriff's Department, and the actual counts taken by the Attorney General during their formal audits.

3. Based on my experience investigating prior bingo games, the average bingo player spends between $14.00 and $18.00 per game. The formal audits by the Attorney General's Office conducted at both these games support these estimates. The formal audit by the Ohio Attorney General of the Lakemore Plaza Bingo game on March 23, 1978 revealed gross receipts of $8,387.30. A formal audit of the Lakemore Plaza Bingo game on March 24, 1978 revealed gross receipts of $6,833.00. Formal audits by the Attorney General at the Mahoning Road Bingo game indicate the following gross receipts and dates: On January 12, 1978, $4,442.50; on February 17, 1978, $5,924.60; on February 18, 1978, $6,383.95;

and on February 19, 1978, $4,795.75. Reports from the Ohio Attorney General reveal that the average daily gross receipts reported, as required by statute, to the Attorney General's Office by the conductors of the Lakemore Plaza Bingo game is $4,174.00. Average daily reported figures from the Mahoning Plaza Bingo game are not available at this time. Multiplying the average nightly expenditure of $15.00 times the variable crowd estimates of between 400 and 600, the average gross receipts for the bingo alone is between $6,000.00 and $9,000.00 per night, per game. This figure does not include sales of instant bingo tickets or concession sales.

4. From conversations with representatives of the Attorney General's Office and from reviewing their audit reports, the affiant has learned that for the time from September, 1977 to April, 1978, the Lakemore Plaza Bingo paid to the Great Martyr

Demetrius Charity, which had the license for Friday and Saturday nights, the sum of $500.00 per week, and paid to the Great Temple Baptist Church, who held the license for Thursday and Sunday nights, the sum of $1,000.00 per week. The affiant also learned that The Great Martyr Demetrius Church has re-negotiated its weekly payments from $500.00 to $800.00 per weekend. The two charities that hold licenses at Mahoning Plaza report income for the bingo to the Attorney General on an average of $500.00 per night. The affiant states that it has been his experience in reviewing the records of other games that Friday and Saturday nights are substantially more lucrative than Thursday and Sunday nights.

5. The receipts and nightly records from each of the bingo games have been traced by surveillance from the bingo halls to the residences of the operators and then traced the following day to an apartment in Akron,

Ohio, owned by Joseph Francis Merlo, listed in paragraph 3 above. The money is traced leaving Merlo's apartment in the possession of his sister, Sandy Brunton, on Sundays and has since been traced being dropped off by her the following day at the Executive Townhouse Apartments, listed in paragraph 9 above. This pattern of transporting the money and records in large canvas bags from both games was established on April 6, 1978 and continually confirmed until the most recent surveillance of June 5, 1978. Surveillance has indicated a consistent pattern at the Lakemore Bingo Hall of Ray and Cecelia Parks loading the canvas bags into their Pinto station wagon, listed in paragraph 12 above, and transporting those bags to their residence at 877 Chalker Street, listed in paragraph 4 above. The pattern has also consistently shown that on Sunday mornings, Cecelia Parks loads the bags back into the Pinto station wagon and transports them to

Joseph Merlo's apartment at 1342 Weathervane Lane, listed in paragraph 3 above. On one occasion, she did use the 1974 Oldsmobile, named in paragraph 15 above, to transport these bags. This occurred on May 28, 1978.

The pattern from the Mahoning Plaza game has also been consistent. The money and records leave the Mahoning Plaza game in similar large canvas bags and is always transported by Gary Hall from the game to his residence at 1321 Benton Avenue, listed in paragraph 6 above. On all but one occasion he drove the 1972 Buick, listed in paragraph 16. On one occasion he used the 1971 Chevrolet Impala, listed in paragraph 14. On each of the following Sunday mornings, Harry S. Blackford stops at the Hall residence and picks up the money. He transports the money in his 1977 Cordoba, listed in paragraph 13 above, from the Hall residence to Joseph Merlo's apartment at 1342 Weathervane Lane in Cedarwood Village, Akron, Ohio.

After the money from both games has arrived at the Merlo apartment, the pattern has consistently been the same. Later on Sunday afternoon, Sandy Brunton, Joseph Merlo's sister, would arrive at the Merlo apartment, driving the 1974 Oldsmobile listed in paragraph 15 above, and would take from the apartment the same canvas bags. She would then transport them to her residence, listed in paragraph 7 above. On June 5, 1978, she was observed transporting the bags from her apartment on Iota Avenue to apartment number 5 in the Executive Townhouse Apartments, listed in paragraph 9 above. On that occasion, she pulled into the garage attached to that apartment and was observed as the door was closing, carrying a large bag.

6. The residence listed in paragraph 5 above, known as 5982 Kungle Road, and the home of Harry S. Blackford, is also the business address for City Novelty, which is a supplier of bingo supplies to the Lakemore

Plaza Bingo game. This information is based on receipts and sales slips that were received from the Attorney General's Office that list an address for City Novelty of a Post Office Box in Barberton. A check by the affiant with the postal authorities in Barberton indicate that that box is leased by City Novelty, giving an address of 5982 Kungle Road, Clinton, Ohio. In addition, records received from the Attorney General's Office indicate that pursuant to required filings in June of 1977, Harry Blackford was the manager of the Mahoning Plaza Bingo game. Based on the affiant's experience in the bingo business, the receipts and sales slips from City Novelty to both the Lakemore Plaza and the Mahoning Plaza games reveal that the prices charged for the items sold are inflated and not competitive with the market in this area. This is a method of skimming money from the game to the operators and promoters. On additional piece of

evidence relating to this residence is the fact that Harry S. Blackford has endorsed checks that were passed at the Lakemore Plaza Bingo game. One additional item, the receipts given for the initial purchase of bingo cards, the so called admission fee receipts, that are given at the Lakemore Plaza Bingo game list the address of the Mahoning Plaza Bingo game on the face of the receipt.

7. Relating to the two guildings located at 767 North Howard Street and listed in paragraph 8 above, the affiant states from his personal knowledge, that records in the Sheriff's Department Identification Bureau indicate that when Ray Parks was arrested in March of 1978, in unrelated charges, he listed as his occupation the owner of City Supply, and listed as its business address 767 North Howard Street. Based on sales receipts received and reviewed by this affiant, City Supply has made numerous sales of bingo supplies to the Lakemore Plaza

Bingo game. Based on this affiant's experience, the prices charged in those sales are excessive and not competitive with local market prices. This is a way, based on this affiant's experience, that operators of games skim money from the games themselves. Based on records obtained from the Ohio Attorney General's Charitable Foundations section, the address of 767 North Howard Street is also the residence given by Herb Soyk. Mr. Soyk is the caller for the bingo game at the Lakemore Plaza. Mr. Soyk's personal automobile has been observed at that address by this affiant on several occasions. This affiant has observed that the windows of the house and the garage located at 767 North Howard Street, are blocked either by paper or painting in warehouse fashion.

8. The affiant states that based on information received from the Attorney General's Office, both City Novelty and Triple A Concession maintain an office in

the hall at Mahoning Plaza. This information was based on personal observations by Attorney General staff members conducting audits at that location.

9. Based on the surveillance of both locations, no large packages leave the halls except the canvas bags mentioned above. The persons carrying the bags are excorted to their vehicles by armed uniformed officers working security at the games.

10. Experience from previous investigations where records had been stored in the trunks of automobiles, coupled with the observations of other records and files in the trunk of Harry Blackford's car, listed in paragraph 13 above, and the mobile nature of the businesses leads the affiant to believe that records are being stored in the trunks of the various listed automobiles and that those automobiles are being used every weekend (the period of this requested warrant) to transport bingo supplies, records

and proceeds.

Further, affiant sayeth naught.

/S/_____
EUGENE L. MAURER, Affiant
Summit County Sheriff's
Department

Sworn to by said DETECTIVE EUGENE L. MAURER, and subscribed in my presence this 9th day of June, A.D., 1978.

/S/ William R. Baird
JUDGE, Common Pleas
Court, Summit County,
Ohio

EXCERPTS FROM TRIAL COURT
TRANSCRIPT OF PROCEEDINGS

Volume II, page 6:

"...we are arguing that the Indictment must be dismissed for eight separate grounds. To begin with the first ground, we allege that the Indictment is vague and indefinite, and violates rules set forth in Russell v. United States 369 U.S. 769, decided 1962, which holds that an Indictment must provide all of the essential elements of the crime, and also provide adequate notice so that a Defendant may prepare his defense and also provide definite and detailed descriptions of the offense charged in order to allow a Defendant to plead an acquittal or conviction in any subsequent case."

Volume II, pages 15-16:

"That is 2915.09(A)(2), and the general gambling 2915.02(A)(2), and it is our position that all three counts must be

dismissed because the gambling statutes are unconstitutional in that the irrational, arbitrary classification, scheme is in violation of due process and the equal protection clauses of the Fourteenth Amendment.

Our argument on that, on those grounds, as that first of all, the bingo statute fails to supply any standards whatsoever for a Defendant to control or guide his conduct. The statute specifies that expenditures no more than customary and reasonable for similar purchases, so on; customary and reasonable are no where defined.

Furthermore, the statute imposes criminal liability if the State were able to prove that an expenditure wasn't customary and reasonable for similar purchases. Not even identical acts which the Defendants committed. All the State need to do is somehow analogize to other acts in order to impose criminal liability. A statute of this nature is unconstitutional because it is clearly

arbitrary in imposing criminal liability, and therefore must fail."

. . .

Volume III, page 47:

. . .

"Mr. Palda: Your Honor, to state our argument on the ground that the search against the Merlos was unconstitutional and the evidence should be suppressed, one of the grounds is that the warrant was over-broad and vague and we would join in the argument put forth by Mr. Glinsek. But I would add that the warrant directing any law enforcement officer to search the apartment of the Merlos stated that for certain property, namely: Supplies, books, and records, and proceeds of the illegal gains and gambling paraphernalia, which is evidence of a criminal offense or the fruits of that crime, to-wit: Engage in organized crime and conducting an illegal bingo game."

. . .

EXCERPT FROM PETITIONERS'
REPLY BRIEF TO THE OHIO COURT OF APPEALS

. . .

"If there had been any misunderstanding concerning the parties' positions with regard to the negotiated no contest pleas, there was full opportunity at the hearing at which the stipulation of facts was recited, the pleas taken, the motion for acquittal made and overruled, to raise the State's new-found concern about the no-contest plea. It is clear from the record that the trial court understood quite well that appellant Joseph Merlo was not contesting the stipulated facts but he was contesting that they proved his guilt of the commission of any of the crimes charged in the indictment.

"At this late juncture, the State should not be allowed to take its choice of which terms of a negotiated plea to accept."

. . .

CONSTITUTION OF OHIO

Article I, Section 10

§10 [Trial of accused persons and their rights; depositions by state and comment on failure of accused to testify in criminal cases].

Except in cases of impeachment, cases arising in the army and navy, or in the militia when in actual service in time of war or public danger, and cases involving offenses for which the penalty provided is less than imprisonment in the penitentiary, no person shall be held to answer for a capital, or otherwise infamous, crime, unless on presentment or indictment of a grand jury; and the number of persons necessary to constitute such grand jury and the number thereof necessary to concur in finding such indictment shall be determined by law. In any trial, in any court, the party accused shall be allowed to appear and defend in person and with counsel; to

demand the nature and cause of the accusation against him, and to have a copy thereof; to meet the witnesses face to face, and to have compulsory process to procure the attendance of witnesses in his behalf, and a speedy public trial by an impartial jury of the county in which the offense is alleged to have been committed; but provision may be made by law for the taking of the deposition by the accused or by the state, to be used for or against the accused, of any witness whose attendance can not be had at the trial, always securing to the accused means and the opportunity to be present in person and with counsel at the taking of such deposition, and to examine the witness face to face as fully and in the same manner as if in court. No person shall be compelled, in any criminal case, to be a witness against himself; but his failure to testify may be considered by the court and jury and may be made the subject of comment by counsel. No person shall be twice put in jeopardy for the same offense.

PROPOSITIONS OF LAW
PRESENTED TO THE OHIO SUPREME COURT

II.

Where a defendant enters a plea of no contest pursuant to plea bargaining negotiations in which the sole predicate for the plea of no contest is a stipulation of facts which is to be tested for sufficiency of proof of the essential elements of the crime charged, due process requires that the convictions and sentences in a no contest plea be vacated and the case remanded for further proceedings if the defendant is not permitted to challenge the sufficiency of the evidence presented in the stipulation of facts.

III.

Where affidavits submitted to a trial court identify specific portions of a search warrant affidavit which are material to a finding of probable cause but which are false, and proof of deliberate falsity

or reckless disregard of truth by the search warrant affiant is offered by reference to sworn testimony of the affiant and his informants, and by reference to exhibits introduced in evidence in a related case, a sufficient showing of falsity or reckless disregard for the truth for material facts of the search warrant affidavit has been made to require an evidentiary hearing to ascertain whether there have been Fourth Amendment violations.

IV.

Where a search warrant issues pursuant to an affidavit which contains only conclusory allegations without supplying the underlying facts and circumstances to support the conclusions and where the warrant fails to supply sufficient particularity of the articles to be seized, suppression of the evidence seized is required under the Fourth Amendment of the United States Constitution.

IV(A).

Suppression was required because the warrants were issued without probable cause.

IV(B).

Suppression was required because the warrants were overbroad and vague.

V.

Where a criminal statute fails to supply clear notice of prohibited conduct and ascertainable standards of guilt, it is violative of standards of due process under the Fourteenth Amendment of the United States Constitution.

VI.

Where an indictment charges defendant with a violation of a criminal statute during an eight month period of time and during said period the statute is substantially amended with respect to the conduct which is prohibited, the indictment fails to supply adequate notice of the crime charged,

in violation of the Sixth and Fourteenth Amendments to the United States Constitution.